

## **BILL ANALYSIS**

Senate Research Center

S.B. 778  
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Jurisprudence  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

A trust is a legal arrangement created on behalf of a beneficiary, and is managed by a fiduciary known as a trustee. A trust may hold money, real property, or personal property. Some changes are needed in laws governing trusts in order to allow trustees to better meet the needs and desires of trust beneficiaries, including giving a trustee authority to purchase insurance for a beneficiary from an affiliate bank in order to obtain competitive pricing, allowing flexibility in the manner in which a trustee is compensated, and allowing the trustee the flexibility to retain trust assets with sentimental value.

S.B. 778 addresses several issues related to the legal responsibilities and authority of a trustee. S.B. 778 grants a trustee who is an employee of a bank the ability to purchase insurance and receive reasonable compensation from an affiliate company, a division within the financial institution, or an associated group of banks; authorizes a trustee to charge a portion or all of his or her compensation against either a trust's principal or income; and authorizes a trustee to deviate from the standard general risk and return investment strategy with respect to certain trust assets with sentimental value to the beneficiary.

S.B. 778 amends current law relating to trusts.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 113.053(f), Property Code, as follows:

(f) Authorizes a national banking association, a state-chartered corporation, including a state-chartered bank or trust company, a state or federal savings and loan association that has the right to exercise trust powers and that is serving as trustee, or such an institution that is serving as custodian with respect to an individual retirement account, as defined by Section 408, Internal Revenue Code, or an employee benefit plan, as defined by Section 3(3), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(3)), regardless of whether the custodial account is, or would otherwise be, considered a trust for purposes of this subtitle, to, subject to its fiduciary duties:

- (1) employ an affiliate or division within a financial institution to provide brokerage, investment, administrative, custodial, or other account services for the trust or custodial account and charge the trust or custodial account for the services;
- (2) unless the instrument governing the fiduciary relationship expressly prohibits the purchase or charge, purchase insurance underwritten or otherwise distributed by an affiliate, a division within the financial institution, or a syndicate or a selling group that includes the financial institution or an affiliate and charge the trust or custodial account for the insurance premium, provided that the person conducting the insurance transaction is appropriately licensed if required by

applicable licensing and regulatory requirements administered by a functional regulatory agency of this state and the insurance product and premium are the same or similar to a product and premium offered by organizations that are not an affiliate, a division within the financial institution, or a syndicate or selling group that includes the financial institution or an affiliate; and

(3) receive a fee or compensation, directly or indirectly, on account of the services performed or the insurance product sold by the affiliate, division within the financial institution, or syndicate or selling group that includes the financial institution or an affiliate, whether in the form of shared commissions, fees, or otherwise, provided that any amount charged by the affiliate, division, or syndicate or selling group that includes the financial institution or an affiliate for the services or insurance product is disclosed and does not exceed the customary or prevailing amount that is charged by the affiliate, division, or syndicate or selling group that includes the financial institution or an affiliate, or a comparable entity, for comparable services rendered or insurance provided to a person other than the trust, rather than receive compensation, directly or indirectly, on account of the services performed by the affiliate or division within the financial institution, whether in the form of shared commissions, fees, or otherwise, provided that any amount charged by the affiliate or division for the services is disclosed and does not exceed the customary or prevailing amount that is charged by the affiliate or division, or a comparable entity, for comparable services rendered to a person other than the trust.

Deletes existing text of Subdivision (1) providing that nothing in this section shall allow an affiliate or division to engage in the sale or business of insurance if not otherwise permitted to do so. Makes nonsubstantive changes.

## SECTION 2. Amends Section 116.201, Property Code, as follows:

Sec. 116.201. DISBURSEMENTS FROM INCOME. Requires a trustee to make the following disbursements from income to the extent that they are not disbursements to which Section 116.051(2)(B) (relating to payment of certain disbursements from income or principal relating to determining certain income) or (C) (relating to payment of other disbursements from principal) applies:

(1) one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee unless, consistent with the trustee's fiduciary duties, the trustee determines that a different portion, none, or all of the compensation should be allocated to income; and

(2)-(4) Makes no change to these subdivisions.

## SECTION 3. Amends Section 116.202(a), Property Code, as follows:

(a) Requires a trustee to make the following disbursements from principal:

(1) the remaining one-half of the disbursements described in Section 116.201(1) unless, consistent with the trustee's fiduciary duties, the trustee determines that a different portion, none, or all of those disbursements should be allocated to income, in which case that portion of the disbursements that are not allocated to income is required to be allocated to principal;

(1-a) the remaining one-half of the disbursements described in Section 116.201(2) (requiring that a disbursement, to a certain extent, of one-half of all expenses for certain matters be made from income); and

(2)-(7) Makes no change to these subdivisions;

Makes nonsubstantive changes.

**SECTION 4.** (a) Provides that, except as otherwise expressly provided by a trust, a will creating a trust, or this section, the changes in law made by this Act apply to a trust existing or created on or after September 1, 2013.

(b) Provides that for a trust existing on September 1, 2013, that was created before that date, the changes in law made by this Act apply only to an act or omission relating to the trust that occurs on or after September 1, 2013.

**SECTION 5.** Effective date: September 1, 2013.